

#### Members

Rep. Ron Herrell, Chair  
Rep. Richard Mangus  
Rep. Dale Sturtz  
Rep. David Wolkins  
Sen. Beverly Gard  
Sen. Kent Adams  
Sen. Glenn Howard  
Sen. Vi Simpson  
David Benshoof  
Michael Carnahan  
Randy Edgemon  
Hon. Jack Fowler  
Marvin Gobles  
William Goffinet  
Max Goodwin  
Lori Kaplan  
Regina Mahoney  
Kerry Michael Manders  
David Rector  
Gary Reding  
Alice Schloss  
Lynn Waters  
Arthur Smith, Jr.  
The Honorable Jim Trobaugh



## ENVIRONMENTAL QUALITY SERVICE COUNCIL

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Authority: P.L. 248-1996 (SEA 138)

### MEETING MINUTES<sup>1</sup>

Meeting Date: November 13, 2000  
Meeting Time: 1:30 p.m.  
Meeting Place: Governmental Ctr. South, 302 W.  
Washington St., Conference Rms 1 & 2  
Meeting City: Indianapolis, Indiana  
Meeting Number: 5

**Members Present:** Rep. Ron Herrell, Chair; Rep. Richard Mangus; Rep. Dale Sturtz; Rep. David Wolkins; Sen. Beverly Gard; Sen. Kent Adams; Sen. Glenn Howard; David Benshoof; Marvin Gobles; Lori F. Kaplan; Regina Mahoney; Kerry Michael Manders; Alice Schloss.

**Members Absent:** Sen. Vi Simpson; Michael Carnahan; Randy Edgemon; Hon. Jack Fowler; William Goffinet; David Rector; Gary Reding; Lynn Waters; Arthur Smith, Jr.; The Honorable Jim Trobaugh.

**Correction to the Minutes of October 25 and November 13, 2000.** Mr. Gary Reding was incorrectly listed as absent at the October 25<sup>th</sup> meeting. Mr. David Benshoof was incorrectly listed as absent at the November 13<sup>th</sup> meeting.

**Call to Order.** Rep. Ron Herrell, Chair of the Environmental Quality Service Council (EQSC), called the meeting to order. He asked Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management (IDEM) to address the Council.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

**Commissioner's Report.** Commissioner Kaplan stated that IDEM has officially finished two complete years without a single late permit. IDEM has not issued a late permit since October 1998. Since that time IDEM has issued 5,857 permits. Of this total, 2,839 were waste water permits; 1,423 drinking water permits; 880 solid waste; 711 air; and four hazardous waste.

**Groundwater Rules.** With respect to promulgation of the groundwater rules, Ms. Kaplan reported that in the late 1980s, the statute was enacted that required the Water Pollution Control Board to adopt rules to establish groundwater standards for Indiana. The statute set up the Groundwater Task Force, which consists of citizens, representatives from local government and business, and representatives from five state agencies. Discussions have taken place on and off for over the past ten years. In November 1999 the draft rule was brought to the Water Pollution Control Board for preliminary adoption. After the preliminary adoption, IDEM learned that there were still some concerns and issues outstanding and that additional discussion was warranted. The major issues concerned prevention. Some were concerned that there should be a level identified for those who are not officially violating standards but who are headed in that direction. Also, applicability was discussed—whether the groundwater rules take effect immediately upon passage or whether additional rules need to be promulgated by the different agencies involved (IDEM, the Department of Natural Resources, the Department of Health, and a few others). IDEM continues to discuss these issues. Two public sessions have occurred in October to take comments. The Groundwater Task Force has met, and IDEM is reviewing all comments that were received. IDEM hopes to discuss these issues further with the Groundwater Task Force in December and prepare a recommendation for the Water Pollution Control Board.

**Indiana Ozone Strategies.** Janet McCabe, Assistant Commissioner, Office of Air Management, IDEM, reported on ozone standards and the Indiana NO<sub>x</sub> Rule.

**One-hour Ozone Standard.** Two areas of the state are still considered non-attainment areas for the one-hour ozone standard: Lake and Porter Counties near the Chicago area and Clark and Floyd Counties near the Louisville area. With respect to Lake and Porter Counties, by the end of this year IDEM is required to submit the final pollution control plan to the U.S. EPA. The plan relies on a number of measures that have been in place for a number of years as well as some new measures, including the nitrogen oxides (NO<sub>x</sub>) rule. A public hearing is scheduled for this plan on November 15. Air quality has been improving in this part of the state, but the air is still unhealthy compared to the one-hour standard for a number of days in the summer in the Chicago/Northwest Indiana area.

For Clark and Floyd Counties, though not as severely polluted as the Chicago area, the air quality is also improving. IDEM has already submitted a plan for attainment to the U.S. EPA for that area. The plan is currently under review. As of the summer of 2000, no violation of the one-hour ozone standard in the area has occurred for the past three years. Consequently, the area is eligible for IDEM to proceed with the re-designation process, which involves composing a plan for the EPA that indicates that the air quality standard has been met because of the measures that have been in place. The measures will continue to be in place, and IDEM will continue to monitor the air quality. IDEM will ask that the area be re-designated to attainment. The U.S. EPA has indicated that they would be receptive to receiving this request.

**Eight-hour Ozone Standard.** The U.S. EPA promulgated this ozone standard three years ago. The standard tightened the requirements by the lowering the level of pollutants and measuring the standard over a longer period of time. Health studies indicate that longer exposure to lower levels caused adverse health effects. EPA received several law suits that challenged their setting of that standard. The U.S. District Court of Appeals for the D.C. circuit remanded the standard for EPA to reconsider the rationale that they used to establish it. The U.S. EPA asked the U.S. Supreme Court to review the Court of Appeals' ruling. On November 7, the case was argued before the Supreme Court. The Court's decision is expected sometime before the end of June.

In the meantime, EPA has been prohibited from implementing the eight-hour standard. A federal law was also recently passed that stated that the EPA could not even formally decide which areas of the country do not meet the standard until the Supreme Court makes its decision next summer. EPA had been in the process of canvassing the country to find out which areas had air quality over the standard. EPA required all states to submit comments last summer. Commissioner Kaplan responded to the request. A copy of the letter as well as supporting documents sent by the Commissioner were distributed. (See Exhibit 1.) IDEM reviewed and commented on the guidance that EPA had distributed pertaining to how decisions would be made relative to which counties would be considered as reaching attainment or non-attainment. EPA's guidance used a combination of actual air quality data and consolidated metropolitan statistical area boundaries. For example, the Indianapolis area consists of Indianapolis and surrounding counties. Not all of the surrounding counties have had ozone monitors for the required three years. However, all of the counties that maintained a monitor have recorded periods of exceeding the eight-hour standard. So the question concerned whether all counties within that metropolitan area should be considered non-attainment areas or just the counties that had monitors. IDEM's view was to look at population centers, industrial areas, and other factors, to determine which areas should be connected for purposes of the study.

There have been about 10-20 days during the summer of 2000 in the Indianapolis areas during which the eight-hour standard was exceeded. To determine if an area does not meet the standard, EPA looks at the fourth highest ozone level for each summer in a three-year-period and averages the values. If the average exceeds 85 parts per billion, the area is considered to be not in attainment.

IDEM is waiting for EPA to respond to Commissioner Kaplan's letter. When EPA responds, the response will begin a formal 120-day consultation period wherein the state and EPA will consult on what the appropriate designations should be. EPA would have to publish the proposed designations, and the public would have an opportunity to comment. EPA has not indicated when it plans to take the next formal step. IDEM believes that it is inadvisable to give counties a legal definition of non-attainment when it is not clear what the implications will be in terms of economic development constraints.

**Statewide NOx Rules.** A couple of years ago the U.S. EPA in response to petitions from some Northeastern and Middle-Atlantic states found that the whole eastern half of the country was contributing to high ozone levels in the region. In order to arrest the ozone problem, there had to be regional reductions of one of the main precursors of ozone formation, which were NOx. NOx are a result of combustion activity and are emitted from cars, power plants, and other industrial activities occurring when items are burned. EPA, working with the states in a large technical group called the Ozone Technical Assessment Group, concluded that emissions of NOx from tall stacks, such as electric utilities, were contributing to the regional ozone problem. So, EPA issued a NOx SIP call. "SIP" is the state implementation plan, which is a set of rules and regulations that implement the Clean Air Act in the state. When EPA "calls" a SIP, it means that there is something inadequate in the plan and that the state must submit revisions.

Indiana participated in challenges to the SIP call because IDEM believed that EPA's approach was a generic approach that did not allow states to come up with their own plan for reducing the necessary amounts of pollution. Additionally, EPA was requiring more reductions than IDEM believed that science indicated was needed in order to reduce regional ozone. Last spring the court upheld the SIP call and ordered the states to complete their rules by October 2000. Several states including Indiana have asked the U. S. Supreme Court to review the decision. It is not known at this point if the Supreme Court will do so.

In the meantime, states need to conform to the rules. IDEM began rule-making last July. A large work group of representatives from utilities, environmental organizations, businesses, local government, etc., are working on the rule. A copy of the steps in the rule-making process as well as highlights of the NOx rule were distributed. (See Exhibit 1.)

**Environmental Audit Reports.** Felicia Robinson, Assistant Commissioner, Office of Enforcement, IDEM, provided an overview of environmental audit reports. IC 13-28-4-11 provides that IDEM must report annually to the EQSC on the use and effectiveness of its enforcement policy that provides relief from civil penalties for voluntary disclosure that results from an internal environmental audit. The goal of self-disclosure and the audit policies is for industries to review their operations and the environmental impacts of those operations. If they find violations, they can come to IDEM and under certain conditions IDEM will abate the penalty that would be assessed by 75% or 100% if the industry installs an environmental management system that would insure ongoing monitoring of environmental performance.

The policy was promulgated in May 1999 and placed in the Indiana Register as a non-rule policy document. They have promoted the policy through special training to all IDEM inspectors and compliance assistance staff so that the staff would be able to inform people about the policy and to generate interest. They also have established a link on their web page; promoted the policy in their strategic goals program for metal finishers; and plan to mention the policy and recommend its use in any future compliance assistance manuals.

Ms. Robinson distributed statistics on the people that have come forward on the policy. IDEM has not had as many people come forward pursuant to the policy as they had hoped. Fear may prohibit individuals from coming forward. The robust compliance assistance program in the state that affords facilities confidentiality in correcting problems might also affect participation. Third, many companies view environmental audits as being expensive and not necessary. On the other hand, EPA also has an audit policy. Many of the companies that have come forward pursuant to these policies are national companies. Oftentimes national companies will go to EPA first to insure that even if they report their violations to the state they will also be protected from EPA. Nine conditions must be met before an individual can take advantage of the audit policy. (See Exhibit 2.)

**Report from the Septic Systems Subcommittee.** Sen. Gard, Chair of the Septic Systems Subcommittee, reported on the work of the subcommittee. The subcommittee has continued to take testimony. The next meeting was scheduled for November 14. At this meeting they will begin discussions for recommendations from the subcommittee. She received in writing recommendations from about three or four sources. These recommendations will be distributed. They would like to make significant progress at the next meeting.

**Other Issues.** David Benshoof requested that IDEM review their professional training and development budget for their staff and to consider an increase in funding for training. Commissioner Kaplan commented that one of IDEM's priorities is to develop a better IDEM, and professional development and training will be a part of this effort. Turnover at the agency is not as high as some might expect. Over 50% of the staff have worked at IDEM for five years or more; 25% have worked at IDEM for ten years or more. Sen. Howard expressed his concerns that we train officials to assist in compliance, yet businesses that do not comply threaten to leave the state if they are forced to comply.

**Next Meeting Date.** The final meeting of the Council will be held on November 22 at 1:30 p.m. in Conference Room C, Indiana Government Center South.

**Adjournment.** The meeting was adjourned at approximately 3:00 p.m.